NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re E.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. E.M., Defendant and Appellant.	A148600 (Sonoma County Super. Ct. No. 38443-J)

Appellant E.M. challenges three probation conditions imposed by the juvenile court on the grounds of vagueness and overbreadth. While this appeal was pending, the Supreme Court decided *People v. Hall* (2017) 2 Cal.5th 494 (*Hall*), which requires us to reject a number of appellant's claims. We direct the trial court to modify one condition and otherwise affirm.

BACKGROUND

In November 2015, a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) was filed alleging that appellant possessed marijuana for sale (Health & Saf. Code, § 11359).[1] In January 2016, appellant admitted the allegation, and in February, the

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[1] We do not summarize the facts underlying the charge because they are not relevant to the issues on appeal.

juvenile court granted appellant deferred entry of judgment (DEJ) status and imposed a number of conditions for the period of his supervision. As relevant here, the court ordered appellant not to: (1) "use or possess intoxicating substances or beverages or associated paraphernalia without a valid prescription";[2] (2) "use, possess, transport, sell or have under [his] custody or control any firearm, replica firearm, ammunition or other weapon. That includes any knives or explosives or any item intended to be used as a weapon"; and (3) "be on any school campus or about any school campus unless [he is] enrolled in that school."

In May 2016, the probation department alleged appellant violated the conditions of his DEJ status because he tested positive for cocaine. The juvenile court found appellant had violated the terms of his DEJ by using cocaine and twice failing to appear for drug testing. The court terminated appellant from DEJ and placed him on electronic monitoring.

Later in May 2016, the juvenile court declared appellant a ward of the court. The court imposed an additional period of electronic monitoring and ordered that "all prior orders not in conflict remain in full force and effect."

This appeal followed.

DISCUSSION

" 'A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.' " (*In re J.B.* (2015) 242 Cal.App.4th 749, 753–754.) Appellant contends three of the probation conditions imposed by the juvenile court are unconstitutional. He argues the court's drug prohibition is vague, overbroad, and lacks a knowledge requirement; the court's weapons prohibition lacks a knowledge requirement; and the court's prohibition on being on "or about" school campuses where he is not

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[2] The trial court's minute order omitted the phrase "without a valid prescription." The parties agree the court's oral pronouncement controls in the circumstances of this case. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.)

enrolled is vague and lacks a knowledge requirement. As explained below, in *Hall* the California Supreme Court rejected constitutional challenges to probation conditions based on the absence of a knowledge requirement, and we follow the decision in rejecting appellant's analogous claims. We also conclude the trial court's drug prohibition condition is not vague or overbroad and direct the court to modify its schools condition to include language specifying the prohibited proximity.

In *Hall*, *supra*, 2 Cal.5th 494, the California Supreme Court rejected a claim that a probation condition prohibiting the possession of firearms and illegal narcotics had to be modified to include an express requirement of *knowing* possession of the prohibited items. The court reasoned that, because "[r]evocation of probation typically requires proof that the probation violation was willful" (*id.* at p. 498), the challenged "probation conditions already include an implicit requirement of knowing possession, and thus afford defendant fair notice of the conduct required of him." (*Id.* at p. 497.) Similarly, in the present case all three challenged probation conditions contain an implicit knowledge requirement and are constitutional under *Hall*. Appellant concedes as much in his reply brief on appeal.

We now turn to appellant's other challenges to the trial court's drug prohibition condition, which provides "You're not to use or possess intoxicating substances or beverages or associated paraphernalia without a valid prescription." Appellant argues the implicit knowledge requirement articulated by *Hall* does not entirely resolve his challenge to the condition, because the term "associated paraphernalia" is unconstitutionally vague and overbroad. He argues the term is not clear and it "could apply to many legal items that E.M. could possess and that do not require a prescription." "To withstand a constitutional challenge on the ground of vagueness, a probation condition must be sufficiently definite to inform the probationer what conduct is required or prohibited, and to enable the court to determine whether the probationer has violated the condition." (*Hall*, *supra*, 2 Cal.5th at p. 500.) But "a probation condition should not be invalidated as unconstitutionally vague ' " 'if any reasonable and practical construction can be given to its language.' " ' " (*Ibid.*) As respondent points out, a

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commonsense and reasonable construction of the condition is that it prohibits the possession of paraphernalia "that facilitates the use of the substances or beverages that could make [appellant] intoxicated in order to prevent further substance abuse." That construction of the provision also resolves appellant's overbreadth challenge because, again as respondent suggests, it "would not limit everyday lawful activities such as appellant's use of glue for an art project, helping his parents paint their home, or filling the tank of the family car with gasoline." Moreover, appellant could only be found in violation of the condition if he knowingly possessed drug paraphernalia. (See *In re Ana C.* (2016) 2 Cal.App.5th 333, 349, disapproved on another ground by *Hall*, *supra*, 2 Cal.5th 494 [knowledge requirement resolves constitutional concerns arising from breadth of condition banning possession of drug paraphernalia].) Appellant's remaining challenge to the drug prohibition condition is, therefore, without merit.[3]

Finally, we turn to appellant's remaining challenge to the schools condition, which prohibits him from being "on any school campus or about any school campus unless [he is] enrolled in that school." Appellant contends the condition is vague because "[i]t does not articulate any standard for judging what amount of space will qualify as 'about' a school." He proposes the condition be modified to prohibit him from being "within 100 feet of a school campus, unless he is enrolled in that school." Respondent agrees that is an appropriate modification. (See *People v. Barajas* (2011) 198 Cal.App.4th 748, 760–762.) We will direct the trial court to modify the condition.

<center>DISPOSITION</center>

The juvenile court is directed to modify the probation condition regarding appellant's presence at or near school campuses to state, "Minor shall not be on a school campus or within 100 feet of a school campus, unless he is enrolled in that school." As so modified, the court's judgment is affirmed.

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[3] We reject appellant's suggestion, unsupported by citations to the record, that the trial court only intended to prohibit the possession of illegal drugs.

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SIMONS, Acting P.J.

We concur.

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NEEDHAM, J.

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BRUINIERS, J.